

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**MOTION FOR PROTECTIVE ORDER PURSUANT TO FEDERAL RULE OF CIVIL  
PROCEDURE 26(c)**

Comes now defendants, Specialty Surgery Center, PLLC (“SSC”), Kenneth R. Lister, M.D. (“Dr. Lister”), and Kenneth Lister, M.D., P.C. (“Dr. Lister’s Practice”) (collectively “the SSC Defendants”), by and through counsel, and respectfully move this Court for Protective Order pursuant to Federal Rule of Civil Procedure 26(c) permitting them to conduct a privilege review of any information from the computers sold to Cumberland Medical Center, Inc. (“CMC”) prior to production to the PSC. As more fully set forth in the supporting Memorandum of Law, this Motion should be granted for the following reasons:

1. The peer review and quality improvement privileges were not waived by the sale of the computers to CMC because the privileges cannot be waived.
2. Work-product protection was not waived by production to CMC because there has been no attempt by SSC to use the protected material offensively as a shield.

3. Any disclosure of information covered by attorney-client privilege was inadvertent and did not waive privilege.<sup>1</sup>

Accordingly, the SSC Defendants request this Court grant their Motion for Protective Order.

Respectfully submitted,

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<sup>1</sup> Alternatively, the Court could include the privilege review procedure requested by SSC in the protective order jointly sought by the PSC and CMC at Doc. 2848.

\* Admitted *pro hac vice*

\*\*Admitted pursuant to MDL Order No. 1

\*\*\*Admitted *pro hac vice*

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be served via electronic mail or regular US mail to those participants identified as unregistered this the 23 day of May, 2016.

/s/Kent E. Krause  
**KENT E. KRAUSE**